

(ii) If this review reveals that the regulated article may be imported under conditions that would reduce the plant pest risk to an insignificant level, APHIS may implement rule-making to add the additional conditions to this subpart, and after the regulations are effective, may issue a permit for importation of the regulated article.

(3) No permit will be issued to an applicant who has had a permit withdrawn under paragraph (d) of this section during the 12 months prior to receipt of the permit application by APHIS, unless the withdrawn permit has been reinstated upon appeal.

(c) *Permit does not guarantee eligibility for import.* Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of first arrival determines that no emergency measures pursuant to the Federal Plant Pest Act or other measures pursuant to the Plant Quarantine Act are necessary with respect to the regulated article.<sup>2</sup>

(d) *Denial and withdrawal of permits.* Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines

that the person to whom the permit was issued has violated any requirement of this subpart. If the withdrawal is oral, the decision to withdraw the permit and the reasons for the withdrawal of the permit shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been denied or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully denied or withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person from whom the permit is withdrawn requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing shall be adopted by the Administrator.

**§319.40-5 Importation and entry requirements for specified articles.**

(a) *Bamboo timber.* Bamboo timber consisting of whole culms or canes may be imported into Guam or the Northern Mariana Islands subject to inspection and other requirements of §319.40-9. Bamboo timber consisting of whole culms or canes that are completely dry as evidenced by lack of moisture in node tissue may be imported into any part of the United States subject to inspection and other requirements of §319.40-9.

(b) *Monterey pine logs and lumber from Chile and New Zealand; Douglas-fir logs and lumber from New Zealand—(1) Logs—*

(i) *Requirements prior to importation.* Monterey or Radiata pine (*Pinus radiata*) logs from Chile or New Zealand and Douglas-fir (*Pseudotsuga menziesii*) logs from New Zealand that are accompanied by a certificate stating that the logs meet the requirements of paragraph (b)(1)(i) (A) through (D) of this section, and that are consigned to a facility in the United States that operates in accordance with §319.40-8, may be imported in accordance with paragraphs (b)(1)(i)(A) through (b)(1)(iii) of this section.

<sup>2</sup>Section 105(a) of the Federal Plant Pest Act (7 U.S.C. 150dd(a)) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he deems appropriate, subject to section 105(d) of the Federal Plant Pest Act (7 U.S.C. 150dd(d)), any product or article, including any article subject to this subpart, which is moving into or through the United States, and which he has reason to believe is infested with any such plant pest at the time of the movement, or which has moved into the United States, and which he has reason to believe was infested with any such plant pest at the time of the movement. Section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 107 of the Federal Plant Pest Act (7 U.S.C. 150ff) also authorize measures against regulated articles which are not in compliance with this subpart.

(A) The logs must be from live healthy trees which are apparently free of plant pests, plant pest damage, and decay organisms.

(B) The logs must be debarked in accordance with §319.40-7(b) prior to fumigation.

(C) The logs and any solid wood packing materials to be used with the logs during shipment to the United States must be fumigated in accordance with §319.40-7(f)(1), within 45 days following the date the trees are felled and prior to arrival of the logs in the United States, in the holds or in sealable containers. Fumigation must be conducted in the same sealable container or hold in which the logs and solid wood packing materials are exported to the United States.

(D) During shipment to the United States, no other regulated article is permitted on the means of conveyance with the logs, unless the logs and the other regulated articles are in separate holds or separate sealed containers, or, if the logs and other regulated articles are mixed in a hold or sealed container, the other regulated articles either have been heat treated with moisture reduction in accordance with §319.40-7(d), or have been fumigated in the hold or sealable container in accordance with paragraph (b)(1)(i)(C) of this section.

(ii) *Requirements upon arrival in the United States.* The following requirements apply upon arrival of the logs in the United States.

(A) The logs must be kept segregated from other regulated articles from the time of discharge from the means of conveyance until the logs are completely processed at a facility in the United States that operates under a compliance agreement in accordance with §319.40-8.

(B) The logs must be moved from the port of first arrival to the facility that operates under a compliance agreement in accordance with §319.40-8 by as direct a route as reasonably possible.

(iii) *Requirements at the processing facility.* The logs must be consigned to a facility operating under a compliance agreement in accordance with §319.40-8 that includes the following requirements:

(A) Logs or any products generated from logs, including lumber, must be

heat treated in accordance with §319.40-7(c), or heat treated with moisture reduction in accordance with §319.40-7(d).

(B) The logs, including sawdust, wood chips, or other products generated from the logs in the United States, must be processed in accordance with paragraph (b)(1)(iii) of this section within 60 days from the time the logs are released from the port of first arrival.

(C) Sawdust, wood chips, and waste generated by sawing or processing the logs must be disposed of by burning, heat treatment in accordance with §319.40-7(c), heat treatment with moisture reduction in accordance with §319.40-7(d), or other processing that will destroy any plant pests associated with the sawdust, wood chips, and waste. Composting and use of the sawdust, wood chips, and waste as mulch are prohibited unless composting and use as mulch are preceded by fumigation in accordance with §319.40-7(f)(3), heat treatment in accordance with §319.40-7(c), or heat treatment with moisture reduction in accordance with §319.40-7(d). Wood chips, sawdust, and waste may be moved in enclosed trucks for processing at another facility operating under a compliance agreement in accordance with §319.40-8.

(2) *Raw lumber.* Raw lumber, including solid wood packing materials imported as cargo, from Chile or New Zealand derived from Monterey or Radiata pine (*Pinus radiata*) logs and raw lumber from New Zealand derived from Douglas-fir (*Pseudotsuga menziesii*) logs may be imported in accordance with paragraphs (b)(2) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers; *Except for* mixed shipments of logs and raw lumber fumigated in accordance with §319.40-7(f)(2) and moved in accordance with paragraph (b)(1)(i)(D) of this section. Raw lumber on the vessel's deck must be in a sealed container.

(ii) The raw lumber must be consigned to a facility operating under a

compliance agreement in accordance with §319.40-8 that requires the raw lumber to be heat treated in accordance with §319.40-7(c) or heat treated with moisture reduction in accordance with §319.40-7(d) before any cutting, planing, or sawing of the raw lumber, and within 30 days from the time the lumber is released from the port of first arrival.

(c) *Tropical hardwoods*—(1) *Debarked*. Tropical hardwood logs and lumber that have been debarked in accordance with §319.40-7(b) may be imported subject to the inspection and other requirements of §319.40-9.

(2) *Not debarked*. Tropical hardwood logs that have not been debarked may be imported if fumigated in accordance with §319.40-7(f)(1) prior to arrival in the United States.

(3) *Not debarked; small lots*. Tropical hardwood logs that have not been debarked may be imported into the United States, other than into Hawaii, Puerto Rico, or the Virgin Islands of the United States, if imported in a lot of 15 or fewer logs and subject to the inspection and other requirements of §319.40-9.

(d) *Temperate hardwoods*. Temperate hardwood logs and lumber (with or without bark) from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported if fumigated in accordance with §319.40-7(f) prior to arrival in the United States and subject to the inspection and other requirements of §319.40-9.

(e) *Regulated articles associated with exclusively tropical climate pests*. Regulated articles that have been identified by a plant pest risk assessment as associated solely with plant pests that can successfully become established only in tropical or subtropical climates may be imported if:

(1) The regulated article is imported only to a destination in the continental United States; and,

(2) the regulated article is not imported into any tropical or subtropical areas of the United States specified in the permit.

(f) Cross-ties (railroad ties) from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported

if completely free of bark and accompanied by an importer document stating that the cross-ties will be pressure treated within 30 days following the date of importation.

(g) *Solid wood packing material and merchandise from the Peoples Republic of China including Hong Kong*. This paragraph does not apply to shipments transitting the Peoples Republic of China including Hong Kong from other countries en route to the United States, unless merchandise or solid wood packing material is added to such shipments while in the Peoples Republic of China including Hong Kong. Otherwise, merchandise exported from the Peoples Republic of China including Hong Kong that is accompanied by solid wood packing material may only be entered into the United States in accordance with this paragraph (g) and paragraph (i) of this section. This restriction applies to both merchandise that originated in the Peoples Republic of China including Hong Kong and merchandise that entered the Peoples Republic of China including Hong Kong for further processing or packaging, regardless of whether the merchandise moves directly from the Peoples Republic of China including Hong Kong to the United States or transits other countries en route to the United States.

(1) Prior to exportation from the Peoples Republic of China including Hong Kong, any solid wood packing material must be heat treated, fumigated, or treated with preservatives, using a treatment schedule contained in §319.40-7 or in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at §300.1 of this chapter. During the entire interval between treatment and export the solid wood packing material must be stored, handled, or safeguarded in a manner which excludes any infestation of the solid wood packing material by plant pests.

(2) Any merchandise accompanied by solid wood packing material exported from the Peoples Republic of China including Hong Kong may only be entered if the importer has on file at its office, and retains there for a period of one year following the date of importation, the following documents:

(i) A certificate signed by an official of the applicable government agency authorized by the government of the Peoples Republic of China or the government of the Hong Kong Special Administrative Region, stating that the solid wood packing material, prior to export from the Peoples Republic of China including Hong Kong, has been heat treated, fumigated, or treated with preservatives using a treatment schedule contained in §319.40-7 or in the Plant Protection and Quarantine Treatment Manual, and

(ii) An importer statement (a written statement by the importer affirming that the importer has on file at his or her office the certificate required under paragraph (g)(2)(i) of this section).

(3) In addition to the document requirements of paragraph (g)(2) of this section, a copy of the certificate must accompany all shipments that do not enter using the United States Customs Service's electronic entry filing and Automated Broker Interface.

(4) Upon the request of an APHIS inspector or a United States Customs Service officer, the importer must produce a copy of the certificate and importer statement issued for any shipment.

(5) At their option, in order to expedite release of a shipment, an importer may provide a certificate to the APHIS inspector at the port of first arrival prior to the arrival of the shipment. Exporters may also at their option, in order to expedite release of their shipment at the port of first arrival, arrange to have each article of solid wood packing material that has been treated marked at the treatment facility with a stamp or weatherproof label that reads CHINA TREATED. This type of marking, however, is not a substitute for the required certificate.

(6) If an APHIS inspector determines that a shipment imported from the Peoples Republic of China including Hong Kong contains plant pests, or contains solid wood packing material that was not heat treated, fumigated, or treated with preservatives, the APHIS inspector may refuse entry of the entire shipment (merchandise and solid wood packing material). If an importer does not produce upon request

by an APHIS inspector the certificate required for a shipment imported from the Peoples Republic of China including Hong Kong containing solid wood packing material, the APHIS inspector may refuse entry into the United States of the entire shipment (merchandise and solid wood packing material) until the certificate is produced. For any shipment refused entry, if the APHIS inspector determines that the merchandise may be separated from the solid wood packing material and that the solid wood packing material may be destroyed or reexported without risk of spreading plant pests, the inspector may allow the importer to separate the merchandise from the solid wood packing material at a location and within a time period specified by the inspector to prevent the dissemination of plant pests, and destroy or reexport the solid wood packing material under supervision of an inspector. The means used to destroy solid wood packing material under this section must be incineration, or chipping followed by incineration. The importer shall be responsible for all costs associated with inspection, separation, and destruction or reexportation of any solid wood packing material, including costs of the services of an inspector to monitor such activities, in accordance with §354.3(j) of this chapter. Any such costs may be charged to the importer's customs bond.

(h) *Cargo from the Peoples Republic of China including Hong Kong that does not contain solid wood packing material.* Merchandise exported from the Peoples Republic of China including Hong Kong that is not accompanied by any solid wood packing material must have attached to the commercial invoice, the bill of lading, or the airway bill, an exporter statement stating that the shipment contains no solid wood packing material. As an alternative to attaching the exporter statement to the paperwork presented at entry, the importer may provide the exporter statement to the APHIS inspector at the port of entry prior to arrival of the shipment. Any shipment is subject to inspection for solid wood packing material, and if such inspection is ordered by an inspector, the shipment will not be granted entry into the United

States prior to completion of the inspection. If the inspection reveals solid wood packing material, the inspector may refuse entry into the United States of the entire shipment (merchandise and solid wood packing material). Any shipment refused entry will be handled in accordance with the procedures in paragraph (g)(6) of this section. The importer shall be responsible for all costs associated with inspection, separation, and destruction or reexportation of any solid wood packing material, including costs of the services of an inspector to monitor such activities in accordance with §354.3(j) of this chapter. Any such costs may be charged to the importer's customs bond.

(i) *Special provisions for air overnight couriers and air express delivery companies.* Overnight couriers and express delivery companies must present to an APHIS inspector at the port of first arrival, at or prior to the time of entry, one or more certificates for each arriving aircraft that carries packages employing solid wood packing material. The company may present one certificate in cases where the company has arranged treatment of all solid wood packing material on the flight, and may present multiple certificates in cases where packages with solid wood packing material were accepted for delivery by the company from multiple customers, each of whom arranged for treatment and certification of their respective packages. The certificates must be signed by an official of the applicable government agency authorized by the government of the Peoples Republic of China or the Hong Kong Special Administrative Region, and must state that the solid wood packing material, prior to export from the Peoples Republic of China including Hong Kong, has been heat treated, fumigated, or treated with preservatives using a treatment schedule contained in §319.40-7 or in the Plant Protection and Quarantine Treatment Manual. If the aircraft contains no packages that employ solid wood packing material, or contains both packages that do and do not employ solid wood packing material, the overnight courier or express delivery company must also present to an APHIS inspector at the port of first

arrival, at or prior to the time of entry, one or more exporter statements stating that the packages on the aircraft not covered by a certificate contain no solid wood packing material.

(j) *Customs entry or entry summary filing requirements.* By instruction, the United States Customs Service will inform importers of any information that may be required on entry or entry summary documentation under the Automated Broker Interface or other entry filing systems, electronic or otherwise, with regard to recording the existence of certificates, importer statements affirming that the importer has on file at his or her office any certificate required, and exporter statements that there is no solid wood packing material in a shipment.

(k) *Liability under the Customs import bond and international carrier bond.* Any failure of an importer to comply with any of the provisions regarding the maintenance or presentation of records or information as prescribed in this subpart may result in liability under the Customs basic import bond. Any failure of a carrier to comply with any of the provisions regarding the maintenance or presentation of records or information as prescribed in this subpart may result in liability under the international carrier bond.

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#### **§319.40-6 Universal importation options.**

(a) *Logs.* Logs may be imported if prior to importation the logs have been debarked in accordance with §319.40-7(b) and heat treated in accordance with §319.40-7(c). During the entire interval between treatment and export, the logs must be stored and handled in a manner which excludes any access to the logs by plant pests.

(b) *Lumber—(1) Heat treated or heat treated with moisture reduction.* Lumber that prior to importation has been heat treated in accordance with §319.40-7(c), or heat treated with moisture reduction in accordance with §319.40-7(d), may be imported in accordance with paragraphs (b)(1) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article